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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCHED BY

DA 95 -966

In the Matter of)
)
The NYNEX Telephone Companies)
) Transmittal No. 374
Tariff F.C.C. No. 1)
) CC Docket No. 94-157
)

**MEMORANDUM OPINION AND ORDER
SUSPENDING RATES**

Adopted: April 27, 1995; Released: April 27, 1995

By the Chief, Tariff Division, Common Carrier Bureau:

I. INTRODUCTION

1. On April 14, 1995, the NYNEX Telephone Companies (NYNEX) filed Transmittal No. 374 to increase its premium, transitional, and directory assistance interconnection charges. On April 20, 1995, MCI Telecommunications Corporation (MCI) and Frontier Communications International Inc. (Frontier) filed petitions to suspend and investigate the transmittal.¹ NYNEX filed a reply on April 25, 1995. Transmittal No. 374 is scheduled to become effective on April 28, 1995. For the reasons given below, we suspend NYNEX Transmittal No. 374 and include it in our investigation in CC Docket No. 94-157.²

II. BACKGROUND

2. The investigation in CC Docket No. 94-157 was initiated in December 1994 to consider the local exchange carriers' (LECs') requests for exogenous treatment of the costs associated with implementation of Statement of Financial Accounting Standards-106 (SFAS-106),

¹ In addition, Empire Association of Long Distance Telephone Companies, Inc. (Empire) filed a letter in support of Frontier's Petition. Letter from Emilio Petroccione, Counsel for Empire, to Secretary, FCC, April 19, 1995.

² Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690, *et al*, CC Docket No. 94-157, Memorandum Opinion and Order, DA 94-1613 (Tariff. Div. Com. Car. Bur., rel. Dec. 29, 1994) (*SFAS-106 Suspension Order*).

"Employers Accounting for Postretirement Benefits Other Than Pensions." In that proceeding, a number of LECs sought to adjust their price cap index (PCI) levels to reflect implementation of SFAS-106 since the United States Court of Appeals decision in *Southwestern Bell Telephone Company v. FCC*, 28 F. 3d 165 (D.C. Cir. 1994). In that case, the United States Court of Appeals for the District of Columbia Circuit reversed and remanded a Commission Order which concluded that increases in booked Other Postretirement Employee Benefits (OPEB) costs caused by the implementation of SFAS-106 were not eligible for exogenous treatment.³ SFAS-106 requires companies to account for OPEBs on an accrual basis, treating OPEBs as a form of deferred compensation earned by employees during their working years. Accordingly, the costs of OPEBs are recognized during the years the benefits are earned, rather than during the years when the amounts of benefits are actually paid by the company. In addition, SFAS-106 requires companies to recognize on their books the amount of their unfunded obligation for OPEBs to retirees and to active employees as of the date of their adoption of SFAS-106. This obligation is known as the Transitional Benefit Obligation (TBO).⁴

3. While it is clear that after the *Southwestern Bell* decision, *supra*, changes in LEC OPEB costs caused by the implementation of SFAS-106 are eligible for exogenous treatment, other issues remain that concern the specific adjustments that LECs may make to their PCI levels to reflect the cost change. Those issues are now under investigation in CC Docket No. 94-157.

III. PLEADINGS

A. The Transmittal

4. In this transmittal, NYNEX is proposing to increase its interconnection charges for the following rate elements: (1) premium rate per minute of use; (2) transitional rate per minute of use and; (3) directory assistance per call. NYNEX contends that this is a within cap-within band filing. In addition, NYNEX states that the proposed rate increase is possible due to, among other things, the headroom created as a result of its OPEB filing in NYNEX Transmittal No. 328.⁵

³ Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers' Accounting for Postretirement Benefits Other Than Pensions," CC Docket No. 92-101, Suspension and Investigation Order, 7 FCC Rcd 2724 (Com. Car. Bur. 1992), Memorandum Opinion and Order, 8 FCC Rcd 1024 (1993) (*OPEB Order*).

⁴ TBOs were created as a result of both the change from cash-based to accrual accounting and the SFAS-106 requirement that companies recognize on their books the amount of their unfunded obligation for OPEBs to retirees and to active employees existing as of the date of their adoption of SFAS-106. This unfunded obligation reflects the amount that a company would have accrued on its books as of the effective date of the accounting change if it had been operating under the accrual method. *SFAS-106 Suspension Order*, at para. 7.

⁵ NYNEX Transmittal No. 374, Description and Justification (D&J) at 3-4.

B. MCI's Petition

5. MCI states that NYNEX Transmittal No. 374 should be suspended and investigated because it takes advantage of a PCI level that is already under investigation in the *SFAS-106 Investigation Order*, *supra*. According to MCI, NYNEX Transmittal No. 374 uses pricing flexibility created in December 1994 when NYNEX claimed exogenous cost treatment of the accounting charges for OPEBs. MCI maintains that OPEBs create an accounting obligation that must be recognized on the books of companies, including LECs.⁶ In addition, MCI states that the Commission has also established that LEC tariffs that take advantage of the suspect PCIs are subject to suspension and investigation.⁷ MCI argues that this transmittal should also be suspended and investigated.⁸

6. MCI further contends that the Commission has recently ordered the LECs to reduce their interconnection charges in the Report and Order in the LEC price cap performance review proceeding.⁹ As a result of that Order, NYNEX will be required to lower its PCI and to delete all effects of the accounting change for OPEBs, according to MCI.¹⁰ MCI contends that NYNEX is attempting to raise the interconnection charges just for the few months that remain before the new rules go into effect. MCI states that this unreasonable action warrants suspension and investigation.¹¹

C. Frontier's Petition

7. Frontier maintains that NYNEX is proposing a last-minute price increase in interconnection charges to offset the impending price decreases ordered by the Commission in the *LEC Price Cap Performance Review Order*. According to Frontier, NYNEX is attempting to raise prices for its captive interstate access customers.¹²

⁶ *SFAS-106 Investigation Order*, *supra* at paras. 6-8.

⁷ Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 747, Memorandum Opinion and Order Suspending Rates, DA 95-497 (Tariff Div. Com. Car. Bur., rel. March 15, 1995).

⁸ MCI Petition at 3.

⁹ In the Matter of Price Cap Performance Review for Local Exchange Carriers, First Report and Order, CC Docket No. 94-1, FCC 95-132, (rel. April 7, 1995) (*LEC Price Cap Performance Review Order*).

¹⁰ MCI Petition at 5-6.

¹¹ *Id.* at 6.

¹² Frontier Petition at 2.

D. NYNEX Reply

8. In its reply, NYNEX states that the proposed rates are all within the price cap limits and service band limits. While NYNEX concedes that the *LEC Price Cap Performance Review Order* requires NYNEX to make a one-time reduction in its PCIs in the 1995 annual access tariff filing to adjust the past productivity factor and to remove ongoing effects of "noneconomic" exogenous cost changes for OPEBs, the Commission made it clear that these reductions are only on a prospective bases.¹³ According to NYNEX, the Commission stated in that Order that it did not seek to reclaim OPEB revenues obtained at that time under the LECs' filed tariffs because those rates are subject to the pending investigation in CC Docket No. 94-157. The Commission further stated, according to NYNEX, that the lawfulness of those tariffs will be determined by the rule in effect when the tariffs were filed.¹⁴

IV. DISCUSSION

9. We have reviewed NYNEX Transmittal No. 397, the supporting documents, and pleadings. We find that the issues raised by this transmittal are the same as the issues under investigation in CC Docket No. 94-157. As indicated above, NYNEX states that it is proposing to increase its interconnection charges to reflect the headroom created by the exogenous cost treatment for OPEBs. While the Court has ordered the Commission to grant exogenous treatment of these postemployment benefits, the question of the specific amount eligible for exogenous treatment is subject to investigation in CC Docket No. 94-157. Therefore, we are suspending the transmittal and including the issues presented therein in CC Docket No. 94-157.

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revised rates set forth in NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 374, IS SUSPENDED for one day from the current effective date and an investigation of those rates is included in CC Docket Nos. 94-157. The NYNEX Telephone Companies SHALL FILE supplements reflecting this suspension no later than five days from the release of this Order and should cite the "DA number" of this Order as the authority for making this tariff filing.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204 (a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the NYNEX Telephone Companies SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject of this

¹³ *LEC Price Cap Performance Review Order*, *supra* at paras. 252-53, 309.

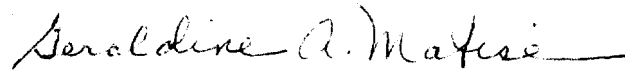
¹⁴ NYNEX Reply at 2-3.

investigation.

12. IT IS FURTHER ORDERED that the NYNEX Telephone Companies SHALL INCLUDE STATEMENTS in all subsequent transmittals revising rates indicating whether, and to what extent, the price change is predicated upon the exogenous cost claim related to OPEBs.¹⁵

13. IT IS FURTHER ORDERED that the petitions to suspend and investigate NYNEX Telephone Companies Transmittal No. 374 filed by MCI Telecommunications Corporation and Frontier Communications International, Inc. ARE GRANTED to the extent discussed above.

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Geraldine A. Matisse
Chief, Tariff Division
Common Carrier Bureau

¹⁵ We anticipate that any such transmittals will be suspended for one day, included in this investigation, and made subject to an accounting order.